LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 27 1966
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1965.

No. 863.

DARREL W. JONES,
Petitioner,

vs.

CHARLES J. FARONI, JR.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

FRANK V. OPASKAR,
614 Hippodrome Bldg.,
Cleveland, Ohio,
Counsel for Respondent.

L. F. CHAPEK,
G. A. CORSO,
Of Counsel.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—PHONE: 621-0647

TABLE OF CONTENTS.

Opposition to Allowance of Writ of Certiorari to the Supreme Court of Ohio ---- 1

As to Jurisdiction ---- 2

Questions Presented ---- 3

As to Petitioner's Statement of Case ---- 3

As to Petitioner's Reasons for Allowing the Writ ---- 4

Conclusion ---- 5

Constitution, Statutes and Rules.

Constitution of Ohio, Art. IV, Sec. 6 ---- 4

Ohio Revised Code, Section 2321.17 ---- 3, 4

28 U. S. C. 1257 ---- 1, 2, 5

Supreme Court Rule 23(f) ---- 2

In the Supreme Court of the United States

OCTOBER TERM, 1965.

No. 863.

DARREL W. JONES,

Petitioner,

vs.

CHARLES J. FARONI, JR.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The respondent, Charles J. Faroni, Jr. respectfully prays this Court, that the petition for certiorari filed herein be denied for the following reasons:

FIRST: That the petition for certiorari filed herein fails to show that this Court has jurisdiction thereof, under Section 1257 of the Federal Judicial Code.

SECOND: That said petition fails to show that any federal question was involved:

(a) In the decision of the trial court; or

(b) The Ohio Court of Appeals; or

(c) The Supreme Court of Ohio.

THIRD: That the involvement of a federal question was not at any time raised or presented by the petitioner, or adjudicated by either the trial court, the Ohio Court of Appeals, or the Supreme Court of Ohio.

FOURTH: The judgment of the Supreme Court of Ohio is based on adequate and independent state grounds.

AS TO JURISDICTION.

The petitioner, as to jurisdiction, claims that this case falls within the provisions of 28 U. S. Code, Section 1257 in that the granting of a new trial upon the weight of the evidence by the trial judge, amounted to a denial of due process of law and equal protection of the law.

We submit that under the circumstances shown by the plaintiff's petition and his brief in support thereof, there is no error of constitutional dimensions or of a substantial federal question, shown and that the petitioner has stated no case which may be reviewed by this Court.

Supreme Court Rule 23(f) in respect to certiorari to review a state court decision, requires that the petitioner's statement shall specify the stage in the proceedings, in the Court of first instance and in the Appellate Court, to which, and the manner in which the federal questions sought to be reviewed were raised, and the method of raising them and the way they were passed on by the court, as will show the federal question was timely and was properly raised.

Petitioner does not comply with this rule of the Supreme Court, for the obvious reason that a constitutional or federal question was at no time raised in the state courts.

QUESTIONS PRESENTED.

Considering that this was a simple case of personal injury claim arising out of an automobile accident, the petitioner's statement of "questions presented" is erroneous. The Trial Judge did set forth the grounds for granting a new trial in his ruling, which was that the verdict was against the manifest weight of the evidence which is one of the grounds provided in Section 2321.17 of the Revised Code of the State of Ohio authorizing the granting of a new trial.

Nor is the second question allegedly raised by the statement that only a unanimous Court of Appeals can grant a new trial on the weight of the evidence of any validity, for the section referred to is in the area covering appellate courts; it merely prescribes the action of a Court of Appeals upon a case before it, but has no bearing on a trial judge who is governed by Section 2321.17 of the Revised Code and is limited only to granting a new trial on the weight of the evidence only once. In no way do the alleged questions indicate that the petitioner was denied the equal protection of law or due process as alleged.

AS TO PETITIONER'S STATEMENT OF CASE.

Petitioner's claim arose out of an accident which occurred on Highland Road as he was traveling in a westerly direction and came into contact with a car operated by the respondent in an Easterly direction and which was then in the process of turning into a driveway. Despite testimony to the effect that the respondent at no time traveled more than three feet across the center line when he stopped and that there was sufficient room for petitioner to pass him, yet petitioner struck respondent's car and despite the fact that petitioner admitted he was not paying

any attention to the respondent, even though he saw him, yet the Jury returned a verdict in his favor for $11,500.00. Though petitioner continued to work, repaired his own car and made only a few visits to a doctor, expending $125.00, the only injury being a cut on his scalp. True, he had other problems, but these were unrelated to the accident and so admitted by petitioner in his opening statement.

AS TO PETITIONER'S REASONS FOR ALLOWING THE WRIT.

There is no doubt that the Court of Appeals and the Supreme Court of Ohio in overruling petitioner's motion to certify and granting the Motion to Dismiss of this respondent found that the trial judge acted within his authority and without any abuse of discretion in discussing the probability of remittitur and in granting a new trial on the weight of the evidence; that he complied with the provisions of Ohio law by setting forth specifically one of the grounds enumerated in Ohio Code as a basis for granting a new trial, namely that the verdict was against the manifest weight of the evidence and that the jury failed to comprehend its duties in the matter, as well as that the restriction of the Ohio Constitution on the Court of Appeals cited by petitioner, to wit: Article IV, Section 6 did not limit the power of the trial court, the only limitation on a trial court's action in Ohio being that the trial judge may grant only one new trial on the weight of the evidence as set forth by Section 2321.17 of the Revised Code.

Not until the filing of this petition, was any Federal issue claimed or raised or ruled on.

CONCLUSION.

In conclusion, we submit:

First: That the petition for allowance of a writ of certiorari fails to disclose that this Court has jurisdiction thereof under Section 1257 of the Federal Judicial Code.

Second: That the petition fails to show that any constitutional, statutory, or federal question was either claimed or adjudicated by the Supreme or Lower courts of the State of Ohio.

Third: That the adjudication made by the Supreme Court of Ohio was based solely and purely on state questions of general law, and not one involving a constitutional, statutory or federal question.

For the above-stated reasons, we submit that the writ of certiorari should be denied.

Respectfully submitted,

F. V. OPASKAR,
Counsel for Respondent.

L. F. CHAPEK,
G. A. CORSO,
Of Counsel.